IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Mat.Appeal.No. 291 of 2006

OP 240/2002 OF THE FAMILY COURT, TRIVANDRUM.

APPELLANT: PETITIONER

P.SANKARAN NADAR ALIAS SELVARAJ,
S/O.PODIPILLA NADAR, T.C.20/1467-1,
JALAJA BHAVAN, RAMACHANVILA, MELARANNUR,
KARAMANA P.O., TRIVANDRUM, NOW RESIDING AT
A.F.LODGE, NEAR C.P.T., NEYYATTINKARA.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENT: COUNTER PETITIONER

D.G.SUNDARABAI,
D/O.DAMARIES, VAIDHIKA SEMINARI QUARTERS,
C/O.SHOBHANAM, KANNAMMOOLA, TRIVANDRUM.

BY ADV. SRI.V.V.PRATHEEKSH KURUP

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON 01/12/2007 PASSED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Mat. Appeal No.291 of 2006

Dated: November , 2007

JUDGMENT

Harun-Ul-Rashid, J.

The petitioner husband filed O.P.No.240/2002 before the Family Court, Trivandrum praying for a decree of divorce on the grounds of cruelty and desertion. The parties got married in the year 1971 as per the Christian religious rites and ceremonies. Two children were born in the said wedlock. From the year 1991 they have been residing separately. The petitioner husband alleged that on several occasions the brothers of the respondent trespassed into his house and he was brutally manhandled and was subjected to medical treatment on several occasions. According to him the brothers of the respondent and the respondent made attempts even to kill him and that the continuation of the marital relationship with the respondent will cause danger to his life. It is also alleged by him that the respondent and her brothers had married away his only daughter even without informing him. He had also narrated as PW.1 the incidents happened on 28.8.1999, 15.9.2001, 13.10.2001 and 22.12.2001. According to him on all these occasions, the respondent and her relatives manhandled him and he had sustained injuries in the incidents. As PW.1 he admitted that from 18.8.1999 onwards he is residing separately in a lodge near Statue, Trivandrum.

2. The respondent in her written statement denied the allegations

levelled against her and her brothers. She denied the averment that she and her brothers manhandled the petitioner or threatened his life. According to her it is the petitioner who is deliberately creating problems and deserted his family.

3. The trial court after appreciating the evidence on record held that the petitioner has not been able to prove that the respondent had treated him with cruelty and that the respondent had deserted him with the intention to bring co-habitation permanently to an end. The learned counsel for the appellant contended before us that the appellant/petitioner had produced the documents relating to the injuries caused in the various incidents narrated in the original petition. As PW.1 he gave evidence deposing before the court that the injuries sustained by him are all caused due to the incidents narrated in the original petition. The counsel also submitted that if the evidence on record, especially the medical proof, if properly appreciated, would conclusively prove that the injuries are sustained due to the harassment and manhandling caused to him by the brothers of the respondent at her instance. We have also noticed the fact that the petitioner/appellant was treated as inpatient as well for the injuries sustained by him. It is for the petitioner to prove convincingly that he had sustained injuries due to the incidents alleged in the petition at the hands of the brothers of the respondent. The counsel for the appellant/petitioner by pointing out to the medical records submitted that the evidence of PW.1

read with medical records will prove that the respondent had been treating the petitioner with utmost cruelty, both mental and physical. He also submitted that the appellant may be given an opportunity to adduce further evidence in support of his case that all the incidents are happened due to the cruel behaviour of the respondent. The counsel submitted that the appellant/petitioner may be given an opportunity to examine witnesses who had witnessed the incidents. We have also noticed the fact that the petitioner had moved this court for police protection and the judgments passed by this court have been produced. It is a fact that the appellant/petitioner had sustained injuries which, according to him, are due to the assaults by the respondent and her relatives. It is for the petitioner to adduce independent evidence to substantiate his case for which we are of the view that an opportunity shall be granted.

4. The court below also shall examine what exactly is the reason for the spouses to live apart for the last several years. Both parties are aged people. The petitioner is also free to adduce evidence in support of his case of desertion as well. We are of the view that repeated incidents are reported to the hospital and police on several occasions viz. 28.8.1999, 30.10.2001, 21.11.2001, 22.12.2001, 24.1.2002, 5.8.2002 and 24.12.2001. It is a fact that the marriage has been irretrievably broken down. A de novo consideration of the matter on the basis of the available evidence and additional evidence, if any, is necessary in the interests of

justice.

In the result, we set aside the judgment and decree under appeal and remand the case for fresh consideration. The court below shall grant further opportunity to both sides to adduce additional evidence, if any.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-